UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1490
23 January 1998

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1490th MEETING

Held at Headquarters, New York,
on Thursday, 28 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Guatemala (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference and Support Services, room DC2-749, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

96-80399 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Guatemala (continued) (CCPR/C/81/Add.7)

1. At the invitation of the Chairman, Mr. Arranz and Mr. Alonzo (Guatemala) took places at the Committee table.

2. Ms. EVATT, recalling that the delegation of Guatemala had confirmed that the draft Indigenous Communities Act referred to in paragraph 92 of the report had not yet been adopted, welcomed the recognition by the Government of the past exploitation of indigenous groups and of the need to involve them in solving the country's problems. She wondered how the Act, once adopted, would cover the issues of the protection of land belonging to indigenous people and of the provision to them of additional land, and asked what proportion of the land currently remained under the control of indigenous groups. She would also welcome clarification of the extent to which land ownership disputes and attempts to gain possession of land belonging to indigenous groups had been a factor in the conflict in Guatemala and in the problems of resettlement of people and restoration of democracy. She asked whether solving questions of land ownership and recognition of indigenous rights was seen by the Government as an important part of measures to restore peace, and how well the indigenous people were integrated into the civil society of Guatemala. She wondered whether the low voter turnout in the latest elections was a reflection of the failure of rural indigenous people to give their support to the country's legal institutions, and what steps the Government would take in order to secure their improved participation in the democratic process and restore their confidence in civilian government. The Government should give additional details of its plans for the disbanding of the Civilian Self-Defence Patrols and the prosecution of human rights violations which had occurred in those areas; in particular, she wondered whether any members of the Civilian Self-Defence Patrols had been tried or convicted as a result of the massacre which had taken place on 5 October 1995 in Xamán.

3. Mr. BHAGWATI expressed considerable concern at the manner in which those who had fled Guatemala and who were returning were being subjected to attacks by military personnel and civil patrols. The Government should specify what action it was taking to correct the situation and to determine who was responsible for attacks on returnees. He wondered whether the civilian government really had the capacity to take the necessary action.

4. Concerning the precedence of the Covenant over domestic law, there seemed to be some contradiction between different articles of the Constitution of Guatemala. The State party should clarify the situation. He also requested clarification of the significance of the second sentence of article 29 of the Constitution; it was not clear whether, in the case of a denial of justice, foreign nationals could avail themselves only of diplomatic channels or whether they could also have access to courts of law. With reference to the last sentence of article 33 of the Constitution, he wondered what was the duration of

the prior notice required for the organization of public demonstrations. He also wondered whether the election of judges for a period of six years by the Parliament was a sufficient guarantee of the independence of the judiciary.

5. A problem of equality of the sexes was referred to in paragraph 77 of the report, which stated that the question of adultery was "regulated by the criminal law of the State of Guatemala (art. 232), with sole reference to the woman and not to the man". He asked whether the Government had any plans to modify that legislation, which was in violation of article 23 of the Covenant. He expressed support for the remarks of Ms. Evatt regarding the rights of indigenous people, and wondered how, in the absence of any law on the subject, the rights enshrined in the Constitution could be enforced. The Government should also clarify, with regard to states of emergency, which of the rights under the Constitution and the Covenant could be suspended, and in what way the state of emergency would be implemented in practice. The derogations provided for under article 138 of the Constitution were very much in excess of those provided for under article 4, paragraph 2, of the Covenant.

6. Mr. EL-SHAFEI said that the report contained no evidence that there had been court cases in which the articles of the Covenant had been invoked. Although it had been stated that the Covenant had become part of the internal law of Guatemala, it was hard to find evidence that the rights and freedoms enshrined in the Covenant had been incorporated into the Constitution or laws of the country. He asked the delegation to give more information on the role and functioning of the Covenant in Guatemalan law.

7. Paragraph 29 of the report, which contained information on how persons entering the country were informed of their rights, mentioned the figure of 561,919 aliens but did not make it clear whether that figure corresponded to the number of people who had entered the country to live there or who had visited it. It was also unclear whether information regarding the Covenant was given only to aliens entering the country, or also to other inhabitants.

8. Regarding military service and conscientious objection, he requested additional information regarding the law governing such matters and how that law operated. Clarification should also be provided regarding the final sentence of paragraph 58 of the report, which referred to senior Guatemalan officials who wished to leave Central America and to restrictions imposed on such persons. He wondered what those restrictions were and whether they applied if the officials in question wished to leave Guatemala without leaving Central America. He also requested additional information regarding the operation of the juvenile courts referred to in paragraph 64 of the report. He also requested clarification of the current status of the Unidad Revolucionaria Nacional Guatemalteca (URNG).

9. Mr. FRANCIS said that, although there were several international instruments covering different aspects of human rights, those rights were in fact indivisible, and although the Covenant was concerned with the civil and political rights, the right to life was also covered. Developing countries frequently cited economic factors and their adverse impact on development, which, in turn, hampered the implementation of human rights agreements. The background information provided by the Government showed that Guatemala suffered from a chronic balance-of-payments deficit, and that 59 per cent of the

population lived in extreme poverty. He supposed that a considerable proportion of the poorest people belonged to indigenous groups. The relevance of that information to the right to life enshrined in the Covenant could not be ignored, and the Government should take all possible steps to tackle the problem of extreme poverty. Regarding the problem of street children, he wondered whether any institution existed or was to be created to assist such children. Urgent steps should be taken to alleviate the situation.

10. Mrs. CHANET, noting that article 138 of the Constitution provided for derogations in emergency situations and that article 5 provided that individuals were not mandated to obey orders not based on the law or issued according to it, asked whether during a state of emergency an individual could be obliged to obey an order even if it was illegal.

11. Noting that the new Government had made clear its determination to break with the past, she wondered what legal and political means it intended to use in order to correct the current situation in which summary executions, torture, death threats and the problem of impunity continued to exist. The root of the problem seemed to be an absence of control over the police forces and the army, and the Government should provide more information as to the political and legal framework within which it would attempt to establish such control.

12. Mr. LALLAH said that the disparity between the report and the information which had been obtained by the Committee from other sources was much too great. The Covenant had been designed to apply to all types of countries, even those emerging from revolutions or civil wars, which was why article 40, paragraph 2, had specified that reports must indicate any factors and difficulties affecting its implementation. The report should have contained an account of the events of recent years in Guatemala and of the steps currently being taken to improve the human rights situation, rather than just a bland description of the country's laws. For example, paragraph 44 of the report stated that in Guatemala, no child or woman had ever been executed; although the intent was clearly to refer to death sentences passed by courts of law, the fact that there had been numerous arbitrary executions of men, women and children should have been taken into account. The Committee had to deal with reality. The report should have explained what political and administrative steps were being taken to improve the situation.

13. Lord COLVILLE, referring to recent reports in the media and by Amnesty International regarding the exhumation of victims of killings in Guatemala in the 1980s, and noting that some of the bodies had been identified, wondered whether the Government had made any attempt to put together that information with the lists of disappearances which had been communicated by the Working Group, and whether it had passed on any information in that respect to the Working Group.

14. The CHAIRMAN, speaking in his personal capacity, asked whether, as a matter of legal principle, an international human rights norm contrary to the Guatemalan Constitution would prevail. Article 46 of the Constitution established the pre-eminence of human rights treaties and agreements over domestic law, but article 204 stated the reverse, while paragraph 479 of the core document (HRI/CORE/1/Add.47) cited other legislation giving the

Constitution precedence over all laws and treaties but adding that, in matters of human rights, treaties and conventions took precedence over internal law. With regard to article 45 of the Constitution, which established that popular resistance was legitimate in the defence of constitutional rights, he would like to know who determined the legitimacy of such resistance and what subsequent action would be taken in cases where it was ascertained that there had been legitimate resistance. Concerning the dissemination of information on human rights, the report spoke of publications (para. 601), but - since four fifths of Guatemala's population was illiterate - it would be interesting to learn what other methods of publicity were being used.

15. Mr. ARRANZ (Guatemala) said that his delegation had exactly the same very real concerns as the members of the Committee about the situation in Guatemala and the quite different picture given in the report. He had remarked at the outset that his delegation, representing a new Government, did not endorse the report's failure to reflect reality. He would try to outline the approach his Government believed was warranted, without making any attempt to defend atrocities such as the killing of street children or the massacre of peasants, yet bearing in mind that the current Administration was totally uninvolved in past events. The huge numbers living in extreme poverty and the general lack of adequate infrastructures had to be fought through effective policies.

16. Replying to two very specific questions, he had been informed by his Foreign Ministry that the Statute of the Central American Court of Justice had not been ratified by Guatemala and Guatemala was not a member of the Court. The Optional Protocol to the Covenant had, on the other hand, been approved by Congress on 14 March 1996 by Decree No. 11/96, and it would thus be ratified before the end of the month upon completion of the requisite constitutional formalities.

17. Turning to the large issues, he cited the fourth report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) (A/50/878), where it stated (para. 159) that verification showed that the majority of violations stemmed from action by agents of the State or groups linked to it and were made possible by the failure of the State to provide guarantees, although they could not be said to be the result of the application of deliberate government policy to violate human rights. The President of Guatemala had endorsed the MINUGUA report; he agreed with its contention that impunity was the main problem, and that both the Government and URNG were responsible, by act or omission, for the human rights violations and welcomed its recognition that both the Government and URNG had taken some positive steps amounting to progress on various points. The Government was incorporating a series of MINUGUA recommendations into a plan of action being drafted to deal with the situation in the country. The reports of Human Rights Procurator and of the Independent Expert for Guatemala of the United Nations Commission on Human Rights both spoke of the efforts the Government was making and the difficulties that persisted.

18. Several things were being done: the difficult process of purification of the security forces, meaning both the army and the civilian police, had begun. Congress was considering a draft Security Act that would unify the National

Police and the Treasury Police and would control private police forces, thus ending the great dispersal of authority in that sphere. It would also increase the number of police officers and improve their equipment and training, the latter under the aegis of MINUGUA and the Office of the Human Rights Procurator, among others. It was crucial to increase the number of police officers: in one of the largest northern departments, for instance, there were only 175 police officers to cover 31 towns, and they did not have one vehicle among them.

19. As part of the follow-up to the recommendations made by MINUGUA, the Office of the Human Rights Procurator and the Independent Expert for Guatemala, the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), over which he presided, was drawing up a plan of action in conjunction with the Minister of Defence, the Minister of the Interior, the Minister for Foreign Affairs, the Public Prosecutor and the Secretary of the National Commission for the Consolidation of Peace (COPAZ). Other ministries would try to devise creative responses to the problems in their own areas of competence. There would be further follow-up, through various liaison committees, between the deputy directors of COPREDEH and the ministries, and between the ministries and the executive branch.

20. Peace was less a matter of the end of the armed conflict than of ongoing social and economic development. Peace must be constructed from within, by addressing the country's deep-seated problems. Even more basic than the re-establishment of peace was the restoration of a culture of coexistence and non-confrontation. On all sides there was a mentality of deep hostility. The Government therefore intended to begin a programme of national reconciliation between groups with utterly divergent experiences in recent years, some of them victims and some of them victimizers, and it would be very hard to bridge the gap. The members of the Civilian Self-Defence Patrols, for instance, would have to change their outlook. The Government was ready to take up that challenge.

21. The problem of impunity was attributable to the very structure of the justice system in Guatemala and also to the fact that the new Code of Criminal Procedure had gone into effect haphazardly without any advance planning. There were plans, therefore, to strengthen and reorganize the Public Prosecutor's Department. In July 1995 it had been separated from the Office of the National Procurator-General, and it was being restructured so as to establish coordination between the security forces and all those who administered justice, from prosecuting attorneys to judges. There was currently a debate about replacing the Public Prosecutor, but actually the whole justice system was at issue.

22. There were also bills before the Congress to ensure the safety of judges, witnesses and prosecuting attorneys, in order to combat the climate of fear and establish de facto security. The Penal Code was being revised to provide for increased penalties and to include new offences. The Code of Criminal Procedure was also being revised to make the section on alternative measures more specific and to regulate their application, since the release of criminals at the discretion of a judge had been a source of impunity; a time-limit of three months, down from six months, would be set for the completion of investigations, and administrative penalties mandated for prosecuting attorneys who did not observe it.

23. It was extremely important not to give privileged treatment to groups or individuals in applying the laws. The military courts, for instance, were being reviewed, and in a recent development, the military officers implicated in the Xamán massacre had been indicted in civil court and it had been confirmed on appeal that they would be tried in a civil court. The hope was that that would set a healthy precedent.

24. In response to the observation that the peace talks in Guatemala had been among the longest on record, he reviewed the various stages of the negotiations from 1987 to date. Although the talks were continuing, a number of basic issues had been resolved and mechanisms put into place; and now the attention was being turned to economic problems and the agrarian situation, the causes of the conflict. The remaining substantive issues were the strengthening of civilian authority, the role of the army, and the basis on which URNG members would be reintegrated into society, together with the corresponding constitutional and electoral reforms. The Government hoped the talks could be concluded in the current year.

25. As to whether the armed conflict had really ended, the Government's hope was that it had. The continuing social and economic conflicts had to be addressed, such as the opposition of military power to civilian power. Among those most interested to see that particular confrontation come to an end were the new military leaders, who were determined to restrict the armed forces to military functions, in line with the requirements of the Constitution.

26. He said that Civilian Self-Defence Patrols were estimated to have 340,000 members, and were currently a topic of negotiations. MINUGUA had been monitoring their activities closely. The Government had undertaken not to set up new patrols and some units had in fact been disbanded. There was no denying that some excesses had taken place, and he confirmed that a small percentage of patrol members bore arms. In fact the majority of patrol members led normal working lives. Nevertheless, the Government had resisted calls to supplement overstretched police forces in urban areas with such patrols. Disbandment alone would not solve the problems which the existence of such units had caused. The underlying problem was one of lingering suspicion and the assumption that certain individuals obviously belonged to or sympathized with certain groups. At the same time the Government was also committed to tracking down and convicting those individuals who had perpetrated excesses.

27. He confirmed that a general problem of impunity had persisted in Guatemala, which meant that warrants had not been served on suspects accused of human rights violations. The army was actively aiding the police force in rounding up patrol members and military commissioners known to have committed violations; in doing so it was helping to clean up its own tarnished image. However, it remained true that the very presence of the military in a particular area could fuel conflict. The Government's long-term strategy for dealing with members of Civilian Self-Defence Patrols was to reassimilate them into society.

28. The low voter turnout in Guatemala was largely attributable to the population's total lack of confidence in government institutions. In addition, faith in elections and democracy had been severely dented when Guatemala's first freely elected civilian Government had failed to address the real needs of the

people. On the other hand, an awareness campaign in rural areas had mobilized large sections of the indigenous community. Of the 300 municipalities in Guatemala, just over 100 currently had mayors drawn from such communities, and six out of 80 deputies in the country's Parliament were also of indigenous origin.

29. The inefficiencies and shortcomings of electoral logistics had also undermined people's faith in the democratic process. The presence of armed individuals at polling places was a matter of particular concern. Moreover, no provision had been made for the large community of Guatemalans living outside the country to cast their votes in national elections. Despite the low turnout, however, in comparative terms the level of political debate had been very lively, the current President having won his mandate by a very narrow margin of just 30,000 votes.

30. All recommendations of human rights bodies pertaining to Guatemala were carefully scrutinized and formed the basis of national human rights programmes. Despite the unpleasant truths sometimes revealed by such bodies, the Government took very seriously the task of implementing all findings which it was in a position to do.

31. The issue of exhumations and the prosecutions stemming therefrom had been a very painful one for all Guatemalans. All exhumations were carried out in the presence of a prosecutor from the Ministry of Justice who had the power to initiate criminal proceedings on the basis of the evidence uncovered.

32. Information on human rights had been widely circulated in Guatemala and plenty of material was made available to the police force, principally through the Office of the Human Rights Procurator and the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH). Unfortunately there was often a prevailing attitude in the police force that the purpose of human rights was to protect the rights of offenders, and an education campaign was under way to change that perception. On a more general level, the Government had attempted to make a police career more economically attractive, since it had been established that police officers were unwilling to put themselves at risk otherwise. Extensive training programmes that made use of assistance from the Venezuelan and Brazilian police forces and MINUGUA had also been put in place. Finally, he wished to make it perfectly clear that the Guatemalan police force had nothing to do with the military.

33. With reference to the problem of street children, he said that the Government had addressed the most flagrant abuses such as extrajudicial killings and murders, but the underlying causes of the problem were still being dealt with. The main problem was not one of street children per se but of children who had been displaced during the long years of war and social disruption. Round-table talks were currently in progress to deal with 14 of the most notorious past cases, but the task of ferreting out those responsible was extremely time-consuming. The Government remained committed to solving the problem by establishing a network of kindergartens and children's homes.

34. Regarding the issue of military service, he informed the Committee that three draft laws on the topic were currently being considered by the Parliament.

The proposed new legislation entertained the possibility of conscientious objection and performing civilian rather than military service.

35. Remarking generally on the notorious Xamán case, he said that the immediate response of the President to the tragedy had demonstrated how seriously the Government took the incident and how unexpected and shocking it had been. At an institutional level, the President had taken responsibility for the massacre as commander-in-chief of the armed forces. He had accepted the resignation of the Minister of Defence and suspended the local military commander. He had also brought the 25 members of the army patrol to justice and paid compensation to the families of the victims. The case had remained within the jurisdiction of the civilian courts and had set all sorts of legal precedents in Guatemala. It had brought into play the whole issue of reliance on the rule of law. On a more general level, the case had forced the Government to look again at a whole series of issues such as military training, civilian perceptions of the military, and ways of encouraging peaceful coexistence between various groups in Guatemalan society.

36. A 1991 study, conducted with the assistance of the United Nations system, had indicated that women in Guatemala had begun to develop greater awareness of their rights and to have recourse to the authorities to enforce them. The 1991 study had, however, concluded that the responses given by State institutions were generally inadequate. Traditional attitudes and a climate of denial prevailed. Even female professionals, responding to victims of ill-treatment, tended to focus on physical while ignoring psychological harm, an attitude that still persisted. The study had concluded that women were not effectively protected.

37. Current legislation suffered from two defects: it was permeated by traditional values, and domestic violence was not categorized as a crime. Although the Government was currently taking action to bring its legislation into line with international instruments, changes in legislation were unlikely to prove effective as long as traditional attitudes persisted. In that connection a review was taking place specifically to determine whether legislation having a bearing on women's rights was fully in accordance with the Constitution. Pursuant to that exercise, various norms relating to adultery had recently been found unconstitutional, since male and female adulterers had not received the same treatment.

38. Mr. ALONZO (Guatemala) said that article 4 of the Constitution guaranteed equal rights for men and women. In that connection, the National Women's Office (ONAM) had conducted a study of legislation that it regarded as discriminatory against women. Such provisions had been identified in the Penal Code, the Labour Code, and the Civil Code, in particular as they related to family law. Currently, for example, men had a greater say in the administration of family assets. COPREDEH, in conjunction with ONAM, had conducted a series of seminars as part of the initiative to reform discriminatory legislation. Some successes had been achieved. For example, it was now illegal to discriminate on the basis of sex in hiring, so that positions must be offered on equal terms for equal pay to any applicant. Likewise, various articles of the Penal Code relating to adultery had been voided as contravening article 4 of the Constitution.

Nevertheless, discrimination remained a day-to-day reality, although participation by women in many areas had grown substantially in recent years.

39. The fundamental role of ONAM was to support and coordinate the development of programmes and projects for women, in recognition of their contribution to national development; to support the formulation and implementation of gender-based national and regional plans; and to serve as a focal point for national and international activities for the advancement of women.

40. He drew attention to articles 6 through 10, 14, 19 and 20 of the Constitution, governing legal detention, the rights of detainees, the presumption of innocence, the penal system, and the rights of minors in criminal proceedings, which provisions all accorded with the Covenant. Article 46 of the Constitution established the general principle that human rights treaties and conventions which Guatemala had ratified took precedence over domestic law, while articles 175 and 204 established the supremacy of the Constitution over any other legislation, including other treaties. That principle had been upheld by the Constitutional Court. The procedures for challenging the constitutionality of general laws were established in article 267 of the Constitution.

41. Article 269 laid down the procedure for appointing members of the Court of Constitutionality, while article 272 established its functions, which included the determination of the constitutionality of treaties, agreements and legislative bills. In that connection, the Court had recently considered the constitutionality of the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), which had subsequently been ratified.

42. On the impartiality of judges, he noted that article 203 of the Constitution provided that judges were independent in the exercise of their functions, subject only to the Constitution of the Republic and its laws. Penalties were provided for in respect of any violation of that provision. Guarantees of the independence of the judiciary were provided for under article 205. Article 215, relating to elections to the Supreme Court of Justice, provided that such elections were to be made by Congress from a list proposed by a nomination committee. Appeal court judges were appointed under a similar procedure, in accordance with article 217. Other judges were appointed by the Supreme Court of Justice in accordance with article 209, which also established the conditions of the judicial profession.

43. The monitoring of courts was governed by the Judiciary Act, which, on the authority of the Chief Justice, provided for inspections and monitoring of courts and specific cases, to ensure the proper and expeditious administration of justice. The office of the Chief Justice had full access to all workings of courts. Particular attention was paid to the competence of judges, impartiality and respect for due process. Cases which had been concluded could also be examined. Any lapses were subject to sanction, including dismissal of offending judges. The office of the Chief Justice had very broad powers in monitoring the courts, and was exempt from criminal and civil liability in that regard.

The meeting rose at 1 p.m.